

7 FAM 490 PRISONER TRANSFER TREATIES

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7 FAM 491 ALTERNATIVE TO INCARCERATION ABROAD

Prisoner transfer treaties, providing for the execution or enforcement of penal sanctions, have been in effect with a number of countries for several years. These treaties provide an alternative to prolonged incarceration abroad without undermining national systems of criminal justice.

7 FAM 492 TERMS OF TRANSFER

The transfer treaty permits a U.S. citizen who has been convicted of a crime in the host country to return to the United States to serve the sentence under more familiar living and cultural conditions, thus enhancing the prospects for rehabilitation. The U.S. Government, the host government, and the prisoner must all consent to the transfer. Prisoners from the host country in the United States are given the same option. A prisoner does not gain the right to appeal the conviction to U.S. courts by transferring under the treaty. U.S. law provides, however, that a prisoner will not suffer the loss of any civil rights because of incarceration in U.S. prisons as a result of transferring under the treaty.

7 FAM 493 ELIGIBILITY FOR TRANSFER

A U.S. citizen is eligible to transfer under the provisions of the treaty when final sentence has been received, that is, when no appeals are pending. Usually, all fines and court costs must be paid. Prisoners who are convicted of certain types of crimes or who have less than 6 months of their sentence remaining to be served generally are not eligible. Individual treaties may, however, vary on these points. In addition, the prisoner must submit proof of U.S. citizenship (such as, U.S. passport, birth certificate, or naturalization certificate).

7 FAM 494 PRELIMINARY ARRANGEMENTS

The transfer process usually begins with the prisoner notifying the nearest U.S. Foreign Service post that the prisoner wishes to be transferred under the treaty. The post then contacts the Foreign Ministry. If the Foreign Ministry consents, arrangements are made with the U.S. Department of Justice for the transfer at a time feasible for that Department. Usually, a team consisting of an official from the Department of Justice, a public defender, and a U.S. magistrate travel to the host country 1 or 2 days prior to the actual date of transfer. The public defender discusses with each eligible prisoner the effects of transferring. Prisoners have the right to consult their own attorneys, at their own expense, if they wish. The prisoner then appears before the magistrate and gives voluntary consent to the transfer.

7 FAM 495 RETURN PROCEDURES

The transferee returns to the United States in the custody of Bureau of Prison officials and is placed in Federal prison to await a parole hearing. Normally, parole hearings are held within 120 days of the transfer. The parole board interviews the prisoner, reviews the prisoner's past record, and considers the stability of the situation into which the prisoner will be released. Within 21 days of the hearing, the board will usually make a decision on the parole release date. It may be immediate, or months or years away, depending on the circumstances of the case. Prisoners who are not eligible immediately for parole are transferred to prisons, correctional centers, or half-way houses as near as possible to their homes. Prisoners released on parole must abide by the rules and stipulations set by their parole officers.

7 FAM 496 THROUGH 499 UNASSIGNED